IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2137 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JITENDRAKUMAR BHANUSHANKAR JOSHI

Versus

STATE OF GUJARAT

Appearance:

MS JAISHRI BHATT for MS KRISHNA U MISHRA for Petitioner

MR KT DAVE, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 03/05/2000

ORAL JUDGEMENT

#. The petitioner has been detained under the provisions of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short) by virtue of an order passed by District Magistrate, Ahmedabad, in exercise of powers under Section 3(1) of the PASA Act, dated December 31,

1999.

#. The grounds of detention indicate that the detaining authority took into consideration 2 offences registered against the petitioner. The detaining authority also took into consideration the statements of three anonymous witnesses in respect of three incidents and came to conclusion that the petitioner is a "bootlegger", that his activities are detrimental to public order, that fear expressed by the witnesses qua the petitioner was genuine and therefore, powers under section 9(2) of the PASA Act were exercised by the detaining authority by not disclosing identity of these witnesses.

#. The petitioner has challenged this order of detention on various counts. However, learned advocate for the petitioner has restricted his arguments to the fact that the subjective satisfaction recorded by the detaining authority for the need for exercise of powers under Section 9(2) of the PASA Act, cannot be considered as genuine. In order to substantiate this submission, learned counsel submitted that the statements of three anonymous witnesses were recorded on December 24, 1999 and December 25, 1999, which were verified by the Sub Divisional Magistrate on December 27, 1999 and the order of detention is passed on December 31, 1999. Learned counsel submitted, therefore, that there was no time for the detaining authority to give consideration to the aspect of correctness and genuineness of the facts stated by the witnesses and the fear expressed by the witnesses, respectively, in their statements. The exercise of powers under Section 9(2) of the PASA Act is improper and has resulted into denial of right of making an effective representation as contemplated under Article 22 (5) of the Constitution. It is submitted that the detaining authority has relied upon the verification made by the Sub Divisional Magistrate but he himself has not verified the same. Learned counsel for the petitioner, therefore, submitted that the petition may be allowed.

#. Mr. K.T.Dave, learned Assistant Government Pleader, has opposed this petition.

#. So far as the statements of anonymous witnesses are concerned, it may be noted that the detaining authority has observed that the fear expressed by the witnesses an the statements are correct and genuine. Barring these statements, there appears nothing to indicate an exercise having been undertaken by the detaining authority for verifying correctness and genuineness of the statements and the fear expressed by the witnesses. The detaining

authority has to take into consideration the background, the antecedents, the character, etc. of the detenue while considering the need for exercise of powers under Section 9(2) of the PASA Act. The authority has to scale the right of the detenue of making an effective representation on the one hand and the public interest on the other and has to strike a balance between the two. The detaining authority has not filed any affidavit nor is there any contemporaneous material to indicate undertaking of such exercise by the detaining authority and, therefore, the exercise of powers under section 9(2) of the PASA Act can be taken to have vitiated. No reliance, therefore, can be placed on these statements for sustaining the order of detention. There is improper exercise of powers under section 9(2) of the PASA Act, as there is no material to indicate the exercise as stated above (BAI AMINA v. State of Gujarat & others, 1981 GLR 1186 and Kalidas Chandubhai Kahar v. State of Gujarat & ors., 1993 (2) GLR 1659).

#. So far as the registered offences are concerned, it is amply clear that the detenue is not supplied with the statements of witnesses recorded under section 161 of the Code of Criminal Procedure in these two offences nor are they put up before the detaining authority. The detaining authority having not considered these statements and having not supplied the statements to the edetenue, th eright of the detenue of making an effective representation under Article 22 (5) of the Constitution is infringed.

#. In view of the above discussion, the reliance placed on by the detaining authority on the statements of anonymous witnesses and the registered offences cannot be upheld. The order of detention as well as the continued detention both are rendered bad in law. The petition, therefore, deserves to be allowed.

#. The petition is allowed. The impugned order of detention dated December 31, 1999 is hereby quashed and set aside. The detenu - Jitendrakumar Bhanushanker Joshi, is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no orders as to costs.

[A.L.DAVE, J.]

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